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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,977

06/14/2007

Mark Ashby

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1136

28075 7590 09/30/2009
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EXAMINER

MASHACK, MARK F

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

09/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/595,977

Applicant(s)

ASHBY ET AL.

Examiner

MARK MASHACK

Art Unit

3773

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773

Continuation of 3. NOTE: The claim limitation "a resilient extension member releasably coupled to the hemostatic material" requires an additional search and consideration.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues that "nowhere does Hannam appear to teach or suggest, 'a flexible plug... being sized to circumferentially cover the blood vessel puncture site and further being sufficiently flexible to conform to and seal the blood vessel puncture site'". Examiner disagrees.

Hannam explicitly discloses "an anchor member or other closure therein for temporarily hemostatically sealing the puncture and then injecting a gelatinous or other hemostatically material" (Column 3, Lines 51-58, Column 4, Lines 31-37, Column 4, Lines 54-57, Column 7, Lines 12-14,...). Furthermore, Hannam explicitly discloses the anchor being able to "expand or unfold to an enlarged configuration suitable for closing off the puncture generally along the artery "(Column 7, Lines 41-46) "yet is sufficiently flexible or pliable to conform generally to the shape of the interior of the artery" (Column 7, Lines 34-37).

Applicant argues that "the surface of the injectable material of Hannam does not appear to be inherently differentiated from the bulk material and thus does not appear to 'encapsulate' the remaining material". Examiner disagrees. Encapsulation does not require differentiation between materials. Encapsulation just requires surrounding. The outer layer inherently encapsulates the inside of the material.

Applicant argues that "the release mechanism also requires 'a resilient extension member coupled to the hemostatic material opposite the flexible plug'" In the claim language "opposite" provides no relative term. The resilient extension member is "coupled" to the hemostatic material and is positioned opposite the flexible plug relative to the blood vessel. Applicant attempts to imply additional meaning to the claim language but that meaning is not claimed. Applicant argues that "the filament does not appear to be 'resilient'" but does not justify the argument. Examiner asserts that a filament can be considered resilient.

Applicant argues that "'couple' has been used in its ordinary dictionary meaning of 'to fastener together' and there appears to be no indication in the cited text that the gelatinous material and the disk even come in contact". Examiner disagrees. The broadest reasonable definition of the term "couple" is "something that joins or connects two things together". This does not require contact. The plunger ejects the hemostatic body to join the flexible disk in the puncture in order to seal the blood vessel.